

Response by the Department of Social Services to the
Department of Planning and Budget's
Economic Impact Analysis of
22 VAC 40-325 – Fraud Reduction/Elimination Effort

The Department of Social Services (DSS) has reviewed the Economic Impact Analysis of the proposed regulation governing the Fraud Reduction/Elimination Effort conducted by the Department of Planning and Budget (DBP). The regulations were written to meet the mandate of §63.1-58.2 of the *Code of Virginia*, which established a statewide fraud program. The Department wishes to respond to certain issues raised in the report.

The **Estimated Economic Impact** section of the report cites §63.1-108 of the *Code of Virginia*, which requires local departments of social services to investigate fraud. The Impact Analysis states that locals have “faced significant costs of complying with no penalty for non-compliance.” While actual fiscal penalties, or charge backs, have rarely been levied against local departments, the *Code of Virginia* at §63.1-123 empowers the State Board of Social Services to authorize the Commissioner ...“to withhold from such locality the entire reimbursement for administrative expenditures or a part thereof to this locality for the period of time the locality fails to comply with state laws or regulations.”

DPB states that the statewide fraud program, named Fraud FREE, is intended to provide financial incentives to local agencies to pursue fraud prevention. Actually, Fraud FREE is unlike benefit and service programs which the Department supervises in that it is not a “funded” program (federal/state) in the strictest sense of the word, but the fraud function is inherent in the administration of the eligibility process. This is consistent with the federal programs, which require (for instance) the pursuit of fraud as part of the Food Stamp and Temporary Assistance for Needy Families (TANF) programs. The Agency for Families and Children (AFC) and the United States Department of Agriculture (USDA) consider this to be included in the reimbursed administrative costs. In spite of this requirement, the Virginia Legislature passed an amendment to §63.1-58.2 of the *Code of Virginia*, enacted on July 1, 1998.

For a variety of reasons, less than half of the 122 local departments of social services were operating a viable fraud program prior to the enactment of Fraud FREE. This amendment sought to increase the emphasis on the elimination of welfare fraud by mandating fraud units in every locality. To provide assistance to localities in meeting the mandate of separate fraud units, funding was offered for the reimbursement of fraud investigator positions. Funding in the amount of \$750,000 was appropriated for program start-up costs. The language of the amendment states that the statewide fraud program would be funded *through the state retained portion of all collections*. This naturally placed the Department into

the role of designing and supervising a program which could be supported through local collections. The only funding available to assist local departments to cover some initial costs was the \$750,000 appropriated for that purpose.

The goals of the Fraud FREE program are to prevent the occurrence of fraud through front-end investigation of questionable applications, and to investigate allegations of fraud which may have occurred in cases under care. The Department believes that front-end investigation affords us the best opportunity for lowering the Food Stamp error rate, for which the state is currently facing sanctions by the federal government. In its report "Fraud Control and Collections In Social Services: Analysis and Recommendations," dated September, 1997, Virginia Polytechnic Institute and State University states that "at least 26% of payment errors were due to fraud, and much of an additional 44% attributed to "inadvertent" client error was probably due to fraud." Front-end investigations have been required of all agencies by §63.1-108 of the *Code*. Fraud FREE policy, and its local plan of operation, reiterates this requirement for local departments to pursue front-end investigations.

§63.1-58.2 of the *Code* states that local departments must establish fraud prevention and investigation units "only insofar as money is appropriated therefor....." The sponsor of the amendment, during hearings in front of the Senate Finance Committee, specifically stated that the initial appropriation was to be used only for investigative positions. Therefore, the Department established a formula for local funding of the cost of investigator positions which is based on Food Stamp and TANF cases under care. Localities have been advised that for the first year of operation, reimbursement for Investigator positions will be based on their Food Stamp and TANF caseloads. The Department considers that this is the most equitable method for distribution of the limited funding. The Department has advised local directors, through a variety of methods (Information Bulletins, Policy Transmittals, workshops, and workgroups), that program funding for subsequent years depends upon collection of any incorrect payments made. This is not necessarily the best approach to a program which is fundamental to program integrity. Local directors take exception to the funding methodology, pointing out that the formula does not take into consideration all costs associated with program operation. Since these costs have been considered part of the administration of benefits by both the federal and state government, the costs are not new mandates, but on-going responsibilities of local agencies.

The Virginia Tech study concluded that over 40% of the backlog of fraud referrals had not been investigated at the time the study was conducted (1996). There are various reasons for this backlog. Most obvious has been the lack of dedicated fraud staff. Consistent with State established priorities established in the early 1990's, Fraud has been one of the lowest priorities in many local departments. Additionally, as DPB points out in its report, some local prosecutors establish thresholds for dollar amounts of cases they will accept for

prosecution. Prosecution is only one method for establishing that fraud occurred in a public assistance case. Another method is through an Administrative Disqualification Hearing (ADH). This method is used in a large number of cases for a variety of reasons. It is a very acceptable alternative to an expensive, time consuming court case. Since §63.1-58.2 states that the state retained portion of all collections will be deposited to the Special Fraud Recovery Fund for use in the statewide fraud program, reimbursement or recoupment through any means, whether through a court order, ADH order, or voluntary repayment, will be used for funding Fraud FREE.

The DPB report states that the Fraud FREE Program has some incentive flaws. Actually, it is not designed to offer incentives, but to enforce the mandates of existing Code sections which require local departments to investigate public assistance cases for completeness and correctness. Fraud FREE does provide some funding to assist with program costs, to the extent funding is available. Any funding limitations do not negate the obligation to operate a vibrant fraud program. A fraud program should not be evaluated solely from the standpoint of cost effectiveness, but rather in terms of a commitment to prevention of fraud, waste, and abuse, and to program integrity.

Fraud FREE has completed the first two phases of its three phase implementation plan. The Department is reviewing suggestions and comments received from local directors and workers, and will continue to work to improve program design and address funding issues.